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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DOMINIC DITOMMASO

§

Plaintiff,

§

V.

CIVIL ACTION NO. 5:16-1302

THE TRAVELERS HOME AND MARINE
INSURANCE COMPANY

§

Defendant

§

**DEFENDANT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant THE TRAVELERS HOME AND MARINE INSURANCE COMPANY, (“Travelers” or “Defendant”), files its Notice of Removal of this action from the 425TH Judicial District Court, Williamson County, Texas to the United States District Court for the Western District of Texas, Austin Division, the Court for the District and Division encompassing the place where the lawsuit is currently pending. In support of this removal, Defendant relies upon the Appendix Filed in Support of Defendant’s Notice of Removal filed contemporaneously herewith and shows the following:

**I.
INTRODUCTION**

1. On November 7, 2016, Plaintiff Dominic Ditommaso filed his original petition in the 425TH Judicial District Court, Williamson County, Texas captioned *Dominic Ditommaso v. The Travelers Home and Marine Insurance Company*, Cause Number 16-1239-C425 (the “State Court Action”).

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2. Citation for the State Court Action was issued on November 28, 2016, and served on Travelers via Certified Mail on December 16, 2016.

**II.
BASIS FOR REMOVAL**

3. This Court has original jurisdiction over this State Court Action, pursuant to 28 U.S.C. §1332(a), because it is a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

4. The Plaintiff seeks monetary relief of over \$100,000.00 but not more than \$200,000. *See Plaintiff's Original Petition*, attached hereto as Exhibit A-1 at page 8. Accordingly, the amount in controversy in this matter meets and exceeds the federal jurisdictional minimum of \$75,000, exclusive of interest and costs.

5. Plaintiff was at the time of the filing of this action, has been at all times since, and still is an individual resident citizen of Texas. *See Exhibit A-1 at page 2*. For diversity purposes, an individual is a citizen of the state of his domicile, which is the place of his true, fixed, and permanent home and principal establishment, to which he has the intention of returning home whenever he is absent therefrom. *See Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). Accordingly, Plaintiff is a citizen of Texas.

6. On the date of this removal and at all relevant times, Defendant The Travelers Home and Marine Insurance Company is a citizen of the State of Connecticut because it is a Connecticut corporation with its principal place of business in the state of Connecticut.

7. Because the amount in controversy exceeds \$75,000 and Plaintiff is a citizen of Texas while no properly joined defendant is a citizen of Texas, this Court has original jurisdiction over the present action pursuant to 28 USC §1332. Therefore, removal is proper.

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8. This action may be removed to this Court pursuant to 28 USC §1441(a), which allows for the removal of any civil action brought in the state court of which the District Courts of the United States have original jurisdiction, by the defendant or the defendants, to the District Court of the United States for the district and division embracing the place where such action is pending.

9. This Notice of Removal is filed within thirty (30) days after service (on December 16, 2016) by Defendant of the State Court Action. This Notice of Removal has also been filed within one year of the filing of Plaintiff's Original Petition by which the State Court Action was commenced. This Notice, therefore, is timely filed pursuant to 28 USC §1446 (b).

III. PROCEDURAL REQUIREMENTS

10. In accordance with 28 USC section 1446 (D), Defendant will promptly give written notice of this Notice of Removal to Plaintiff through counsel of record and file a copy of this Notice of Removal in the 425TH Judicial District Court, Williamson County, Texas.

11. Defendant reserves the right to amend or supplement this Notice of Removal.

12. The following are included in the Appendix filed contemporaneously with this Notice of Removal:

- (a) an index of all documents that clearly identifies each document and indicates the date the document was filed in the State Court Action;
- (b) a copy of each document filed in the State Court Action, except discovery material, arranged in chronological order according to the state court filing date;
- (c) a separately filed JS 44 Civil Cover Sheet; and
- (d) a separately filed Supplement to JS 44 Civil Cover Sheet for Cases Removed from State District Court.

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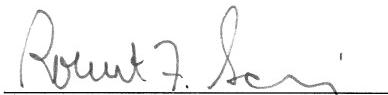
For the above reasons, Defendant gives notice of the removal of the State Court Action to this Court and respectfully request that this action proceed before this Court as though it had originally been instituted in this Court.

Dated: 21 December, 2016

Respectfully submitted,

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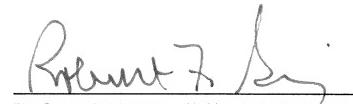

ROBERT F. SCHEIHING
State Bar No. 17736350

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to the following counsel of record in compliance with the Federal Rules of Civil Procedure this 22 day of December, 2016:

Scott G. Hunziker
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ROBERT F. SCHEIHING